

1801817 (Migration) [2018] AATA 5973 (27 August 2018)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1801817
MEMBER:	David Barker
DATE:	27 August 2018
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 27 August 2018 at 12:09pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) (Temporary) – genuine and continuing relationship – validly married – separation and reconciliation – apprehended domestic violence order – financial, household and social aspects of relationship – nature of parties’ commitment – credibility – inconsistent evidence – misleading information – decision under review affirmed

1.

2. **LEGISLATION**

Migration Act 1958 (Cth), ss 5F, 65, 359AA

Migration Regulations 1994 (Cth), r 15A(3), Schedule 2, cls 820.211(2)(a), 820.221

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

3. ISSUE

4. The issue in the present case is whether the applicant was, at the time of application and at the time of this decision, in a genuine and continuing relationship with the sponsor.

APPLICATION FOR REVIEW

5. This is an application for review of a decision of a delegate of the Minister for Immigration on 11 January 2018 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
6. The applicant applied for the visa on 10 August 2012 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
7. On 21 January 2015, a delegate of the Minister refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211(2)(d)(ii) of Schedule 2 to the Regulations. The delegate found that the applicant did not meet the timeframe requirements for the visa and there were no compelling reasons not to apply the requirements.
8. The applicant applied for a review of that decision with the Tribunal which, on 22 June 2016, (similarly constituted) remitted the application to the Department of Immigration (the Department) with the direction that the applicant meets cl.820.211(2)(d)(ii) of Schedule 2 to the Regulations.
9. The Department reconsidered the application and on 11 January 2018 the delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.221 because they found that the applicant is no longer the spouse of the sponsor and that none of the identified circumstances whereby the grant of a permanent visa is possible are present in the applicant's circumstances.
10. The applicant appeared before the Tribunal on 19 July 2018 and 1 August 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor. The Tribunal hearing was conducted with the assistance of an interpreter in the [Language] and English languages.
11. The applicant was represented in relation to the review by his registered migration agent.
12. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

13. BACKGROUND

14. The applicant is [a Country 1] national. He is currently [age] years old. The applicant was previously married from August 2006 to September 2010. There were no children from this union.
15. The applicant first travelled to Australia in January 2008 on a [temporary 1 visa]. The decision record, a copy of which was provided with the review application, notes that this

[temporary 1] visa ceased on 1 February 2008. The applicant was granted a [temporary 2] visa, which ceased on 18 June 2010. He lodged an application for a Partner visa on 13 August 2012.

16. The applicant's sponsor was born in [Country 2] and is currently [age] years old. She arrived in Australia April in 2002 and was granted Australian citizenship [in] February 2005. The sponsor was previously married from September 1997 to February 2011. There was one child from this union, [Child 1], born in [year]. The sponsor has a second child, [Child 2], born in [year]. The sponsor did not identify the natural father of [Child 2], but indicated it was not her previous spouse.
17. On his visa application form the applicant stated he met the sponsor at [Suburb 1], NSW in January 2012 and committed to a shared life together with her to the exclusion of all others in June 2012. The parties were married in [Suburb 2], NSW in August 2012.
18. In the decision record, a copy of which the applicant provided to the Tribunal, the delegate noted the visa application was sent back to the Department with the direction that it be reconsidered and that accordingly they considered whether the applicant met the criteria in cl.820.211 and cl.820.221. The applicant was invited, on 10 November 2016, to provide evidence in support of his claim that he continued to be the spouse of the sponsor. The delegate noted that the applicant provided the following documentary evidence in support of his claims:
 - a [medical] test report for the sponsor, dated 12 December 2016;
 - an [electricity] account overdue notice addressed to the applicant, due on 10 February 2017;
 - [a] gas bill addressed to the sponsor for overdue charges, due on 28 March 2017;
 - a letter from [an Internet Provider] to the sponsor, notifying the termination of internet service, dated 8 March 2017;
 - a toll notice from NSW Roads & Maritime Services addressed to the applicant, due [in] March 2017;
 - an email from [a Charity Organisation] addressed to the applicant, dated 26 April 2017;
 - a letter from [a Member of Parliament] to the sponsor, dated June 2017;
 - a letter from [Lawyers] to the sponsor, dated 28 June 2017;
 - a [Bank] account statement for the applicant and sponsor, for the period between 17 June 2017 and 11 July 2017;
 - an overdue fine notice from the NSW Office of State Revenue addressed to the applicant, due [in] August 2017;
 - a letter to the sponsor from [Lawyers] requesting the payment for debt owed to [a Telecommunications Provider];
 - an invitation card from [an] RSL addressed to the applicant;
 - a greeting card from [an] RSL addressed to the applicant; and
 - a sample of photographs of the applicant and sponsor and with the sponsor's son, [Child 2].
19. The delegate noted that the applicant and sponsor attended interviews with the Department on 11 December 2017 and that as a result of information provided by them, the delegate found that the applicant and sponsor were living together in a spousal relationship at time of application; that the applicant continued to claim that the parties were living together; that during the interview it was established that the applicant and sponsor were no longer living together; and based on his circumstances at time of this decision, the applicant was no longer in a spousal relationship as defined by s.5F.

20. Prior to and on the day of the hearing, the applicant provided the Tribunal with documents including:
- a report from Ms [A], from the [Country 1 Support Organisation], dated 10 July 2018;
 - photographs;
 - a residential tenancy agreement for a rental property leased by the sponsor in [Suburb 3], NSW from 10 April 2018 to 9 October 2018, signed 10 April 2018;
 - a residential tenancy agreement for a rental property leased by the applicant and sponsor in [Suburb 4], NSW from 18 April 2018 to 17 October 2018, signed by the applicant and landlord on 18 April 2018, and by the sponsor on 31 May 2018.
 - a NSW Government Fair Trading rental bond for the rental property in [Suburb 4] identifying the tenant at this property as the applicant.
 - a notice to terminate a tenancy agreement, for non-payment of rent, for the rental property in [Suburb 4] by 6 May 2018, which was served on the applicant on 22 May 2018;
 - a tenancy application from the applicant to move into the [Suburb 3] Property, dated 6 July 2018;
 - documents associated with the amended apprehended domestic violence order (ADVO);
 - drivers license and other documents providing residential address details for the applicant and sponsor;
 - a [Bank] account statement for the applicant and sponsor, for the period between 3 July 2018 and 11 July 2018;
 - email from [a Charity Organisation] to the applicant and sponsor, dated 4 July 2018
 - emails, dated 6 July 2018, to the sponsor and applicant from the applicant's mother;
 - email from [a] temple to the sponsor, dated 8 July 2018;
 - imaging reports regarding the sponsor, dated February 2017.

21. The hearing on 19 July 2018

22. In this matter the delegate, who reconsidered the application for a Subclass 820 Partner visa, in light of the Tribunal's previous determination there were compelling reasons to not apply the Schedule 3 criteria that were otherwise applicable to the applicant's visa application, raised concern as to the reliability of the applicant's evidence and in particular found the applicant sought to mislead the Department with regard to the nature of the parties' relationship at the delegate's reconsideration of his visa application. As a consequence of this finding, I provided the applicant with the opportunity to comment on some of the concerns raised by the delegate in their decision record.
23. In relation to the delegate's finding that the applicant and sponsor were no longer in a spousal relationship, the applicant made the following comments:
- He and the sponsor were married in August 2012 and they have a happy married life and made good plans for their future. His stepson, [Child 2], was [age] years old when he married the sponsor;
 - His father passed away in October 2012, but he could not return to [Country 1] for the funeral because of his visa difficulties. In 2016 his mother had a serious accident and was hospitalised;
 - He and the sponsor had a misunderstanding when he saw messages on her mobile phone from [other people]. He made a mistake and broke her phone. They argued for a few days and then in January 2017 she left their home in [Suburb 1];

- The sponsor left in January 2017 and then, in May 2017, an ADVO was taken out against him for the protection of the sponsor and her son, [Child 2];
 - In March 2017, the sponsor had a second [medical incident] and she was [mental health state]. She developed mental health problems and [mental health condition]. During this period the applicant remained in contact with the sponsor through one of her male friends from [Country 2], with whom she was staying;
 - In September 2017, the sponsor had an accident and called him from [a] Hospital, where she had been admitted. The applicant visited her. She was [mental health state] and he gave her time. After she recovered she contacted him periodically;
 - He did not think they were living apart for as long as they did and he rented a home in [Suburb 4] where they could resume a life together. The sponsor moved into rental accommodation she got through a public housing service in April 2018 and he moved into this accommodation and resumed living with her on 6 July 2018;
 - On 25 April 2018, the sponsor contacted him and asked to meet with him. He asked how he could do that given there was an ADVO preventing him having contact with her. The sponsor told him she wanted them to reconcile and so they met the next day and on 3 May 2018 the sponsor filled out a form to revoke the ADVO;
 - The ADVO was revoked on 23 May 2018 and the applicant was very happy about the sponsor's wish to reconcile with him. He acknowledged he made a mistake and the sponsor accepted his apology because she loves him. They are now happily living together again as husband and wife.
24. In response to a question about why the ADVO was taken out against him by the sponsor, he said that this was because they argued after he became [emotional] after reading the messages from [other people] that were on her mobile phone. He said this was in December 2016 and that after the argument, in which he and the sponsor pushed each other, she left their home for around four days, but then came back.
25. The Tribunal drew the attention of the applicant to the copy of an amended ADVO he provided with the review application, which is dated 23 May 2018. The Tribunal noted the ADVO was not revoked and remained in place until February 2019 with conditions requiring the applicant to not: assault, threaten, stalk, harass, intimidate the sponsor, or destroy or damage her property and possessions. The Tribunal noted this was not consistent with the applicant's claim that the ADVO was revoked and asked him why it was necessary that the amended ADVO with the identified conditions remained in place. In response to this question, the applicant said he made a mistake, for which he has apologised to the sponsor. He said she has forgiven him and that they love each other and have a long-standing relationship. He said he has also been under a lot of stress because of his father's death and his mother's accident. The applicant said the sponsor was shocked by the domestic violence he displayed and that she wanted to continue the ADVO with the restrictions. He said she did this because it was the first instance of domestic violence in their relationship and it shocked the sponsor and that is maybe why she maintained the ADVO and the conditions.
26. In response to a question about the circumstances whereby [Child 2] was removed from the sponsor's care by the NSW child protection authorities, the applicant said he has no idea when this occurred as it was while the ADVO was active and he was not having contact with the sponsor. He said the sponsor had not discussed the circumstances around [Child 2]'s removal with him beyond saying it was because of the [mental health conditions] that was

affecting her. The applicant said that [Child 2] is again in the care of the sponsor, but he does not know when she resumed looking after him.

27. *The applicant's evidence about documents he has provided with the visa and review applications*

28. The Tribunal invited the applicant to comment on the photographs he provided with the review application, after noting did not appear to show the applicant and sponsor undertaking activities that they had planned together. He said the photographs show an occasion when they attended church [a] few weeks prior to the hearing. He said that he only resumed living together with the sponsor on 6 July 2018 and that they have plans for their future. He said he is the only person in their household who is working and that he wants to buy the sponsor a car and some furniture.
29. The applicant confirmed the residential tenancy lease application he submitted to First National states that he had worked as an [Occupation 1] for two years and has a weekly income of [amount]. He confirmed he had previously worked as [an Occupation 2] for two years earning [amount] per week. He said this information was accurate.
30. In relation to electricity account bills covering the period 1 May 2018 to 17 May 2018, the applicant said he provided the electricity bills to show that his name was included. He said these documents demonstrate that he and the sponsor were back living together.
31. In relation account statements or a [bank] account in both his and the sponsor's name, covering the period from 3 July 2018 to 11 July 2018, the applicant said the transactions in this account show that his employment earnings were deposited into the account and that the sponsor uses the account. He highlighted a transaction on 11 July 2018, and said this was where the sponsor withdrew money in [Suburb 4] and that a transaction on 10 July 2018 was made by the sponsor at [a] store in [one suburb] and that on 9 July 2018, the sponsor withdrew \$10 from the account in [another suburb], but he is unsure why she did that.
32. The applicant said financial transactions in the account between January 2017 and July 2018 would not demonstrate any sharing of expenses or pooling of finances between him and the sponsor, as he was the only person using the account during that period.
33. The Tribunal invited the applicant to comment on the concern raised by the delegate that the applicant sought to mislead the Department about the parties' relationship circumstances by providing account statements from the [bank] joint account for the June 2017 to July 2017 period, as the applicant and sponsor were not living together at that time. The applicant said he provided the account statements to the Department because he did not think the separation between him and the sponsor was going to be for a long time.
34. In relation to correspondence addressed to the sponsor at the [Suburb 1] address in June 2017, the applicant conceded the sponsor was not residing with him at the [Suburb 1] address at that time. In response to a question as to why he provided these documents to the Department, the applicant said his thinking was that he would provide them to the Department and by the time the Department got around to process the visa application further, he and the sponsor may have reconciled and started living together again. The Tribunal put to the applicant that his oral evidence raised the concern he had knowingly misrepresented the circumstances of the parties' relationship by providing the [bank] account statements for the June 2017 to July 2017 period. In response to this comment, the applicant conceded he made a mistake by providing those sorts of documents to the Department while the sponsor was not living with him at the [Suburb 1] address.

35. In relation to the report of Ms [A], from [a Country 1 support organisation], dated 10 July 2018, the applicant told the Tribunal this agency was recommended to him by a friend and that he asked for it to be prepared as he wanted to reconcile with the sponsor and wondered how his relationship with the sponsor was going to be documented.
36. The Tribunal noted the report of Ms [A] states there was no contact between the applicant and sponsor during the period of the ADVO and the applicant confirmed this was correct, there was no contact between them. He said in the period from January 2017 to July 2018 he would on occasion make enquiries about the sponsor through one of her male friends from [Country 2]. He then said the sponsor rang him in September 2017 after she was in an accident and that he then visited her in Hospital. He said he spent about an hour with her and that after then, she would on occasion phone him.

37. The second hearing on 1 August 2018

38. The applicant gave evidence he and the sponsor own no real estate or other major assets jointly. The applicant gave evidence he and the sponsor do not have any joint liabilities. In relation to the pooling of financial resources, especially in relation to major financial commitments, the applicant said he and the sponsor had made plans for their future, but because of their separation in January 2017, they did not proceed with these plans. The applicant gave evidence that neither he nor the sponsor owes any legal obligation in respect of each other. In relation to the basis of any sharing of day to day household expenses, the applicant said he lets the sponsor know what he needs and she proceeds to buy the groceries. He said they also go out and eat meals at least once per week.
39. In relation to whether there is any joint responsibility for the care and support of children, the applicant said that earlier he could not do anything with [Child 2] but that he would like in the future to enrol him in a team so that he could play soccer. As to the living arrangements of the parties, the applicant said he, the sponsor and [Child 2] reside in a three-bedroom apartment. As to any sharing of the responsibility for housework, the applicant said the sponsor normally does the cleaning because he goes to work around noon and does not return home until around midnight. He said he does some domestic tasks on his one day off per week.
40. As to whether the applicant and sponsor represent themselves to other people as being in a marital relationship with each other, the applicant said they spend time together with his cousin. As to the opinion of the parties' friends and acquaintances about the nature of the relationship, the applicant said his and the sponsor's friends know they are in a relationship. As to any basis on which the parties plan and undertake joint social activities, the applicant said that he sometimes goes to the sponsor's church on Sundays and at times she accompanies him to his temple. He said they also go to her friends' parties.
41. As to the nature of the persons' commitment to each other, the applicant said he and the sponsor are in a good relationship now. He said he has learnt a lot from the sponsor and that she cares for him a lot.

42. The sponsor's evidence

43. The sponsor gave evidence she ceased residing in a shared household with the applicant on 31 January 2017 because they had an argument. She said they were arguing from July 2016, after the applicant's mother was injured in a motor vehicle accident in [Country 1]. She said the applicant was not himself from that time. She said they found out she was [medical state] in August 2016, but their arguments continued. She said she unfortunately had a [medical incident] and moved out of their home, along with her son, after that because things did not get better between her and the applicant.

44. The sponsor said she went to live with a friend of a friend in Liverpool after she left the applicant. She said this was around the Christmas period in 2016 and that after around two months the applicant came looking for her and spoke to the man in whose home she was staying. She said the man asked the sponsor to leave but that because the applicant's friends and family begged her to return she moved back to the applicant's household in January 2017.
45. She said two weeks later she visited a friend in Merrylands and whilst she was there the applicant checked one of her mobile phones, which she had not taken with her. The sponsor gave evidence that upon her return to the [Suburb 1] household, the applicant confronted her about messages he found on her phone from [other people]. She said the applicant smashed her phone and that later in the evening of the same day there were further arguments and the applicant [was violent] and she fought him back. She said she was in pain the next day and when the arguments continued she called the police.
46. As to why she took an ADVO out against the applicant, the sponsor said she went to a women's health centre after the incident where she had to call the police and they took her to [Suburb 1] hospital for treatment of an injury to her [body part]. She said her [body part] was swollen and needed treatment. She said whilst she was at hospital she found out she was [medical state] again and she thought it was necessary to get the ADVO to ensure there was no further contact with the applicant.
47. In response to the Tribunal noting the ADVO taken out against the applicant was amended, rather than revoked in May 2018 and a question put to the sponsor as to why she considered it necessary to maintain an ADVO, albeit with amended conditions, the sponsor said when she went back to Court they explained everything to her, and she explained that whilst she really loved the sponsor and wanted to resume living with him as soon as possible, she thought it was best that some restrictions were left in place to give her some protection.
48. As to contact she had with the applicant in the period they were not residing together in the same household, the sponsor said she had a second [medical incident] in February 2017. She said she had contact with the applicant in September 2017, around the time of her motor vehicle accident and then further contact since April 2018. She said they resumed living together on 6 July 2018. She said Centrelink were informed that their relationship was reconciled on 1 July 2018 and her rate of parenting payment was reduced.

49. ***Applicant response to sponsor's evidence***

50. The applicant said the sponsor is right and that everything she said was correct.

51. ***Particulars of information put to the applicant pursuant to s.359AA of the Act***

52. The oral evidence given by the parties during the hearing in relation to the domestic violence incident that resulted in the sponsor calling the police and requiring hospital treatment contained inconsistencies. It was also not consistent with the account of the conflict between the parties, which Ms [A] reports was provided to her by the applicant and sponsor. In the interest of procedural fairness, some of the particulars of the information provided by the sponsor in her oral evidence were put to the applicant pursuant to s.359AA of the Act, explaining the reasons why that information was relevant and what the implications were if the Tribunal relied on that information. The Tribunal also advised the applicant he could seek time to consider what comment or response he would like to make to the information.

53. The particulars of the information put to the applicant for his comment or response were:

- The sponsor gave evidence during the hearing that the you [were violent] and that she fought back in the incident that led up to her leaving your household and that when she went to a women's health centre they took her to hospital for treatment of an injury to her hand.

54. Whereas

- In your oral evidence to the Tribunal you said there was just some pushing between you and the sponsor in the argument that led to her leaving your household.

55. Whereas

- The report from the [Country 1 Support Organisation] indicates you and the sponsor told the report writer there had been no physical violence between you in the incidents leading up to the sponsor taking out against an ADVO against you.

56. The Tribunal told the applicant that this information is relevant because it is inconsistent and gives rise to concerns about the reliability of the information he and the sponsor gave to the report writer from the [Country 1 Support Organisation] upon which they formed their opinions. This is in conjunction with the oral evidence he gave about providing documents to the Department which suggested the sponsor was residing with him during the period in which they were separated, which gives rise to a general concern about the reliability of his and the sponsor's evidence and his claims to be in a genuine relationship together.

57. The Tribunal told the applicant that if the Tribunal relies on some, or all of this information in making its decision, it may find he is not currently in a genuine and continuing relationship with the sponsor. The Tribunal told the applicant that if the Tribunal finds the applicant and sponsor are not in a genuine relationship it will affirm the decision to refuse his application for a Partner visa.

58. The applicant did not seek additional time to respond to the issues raised by the Tribunal. He told the Tribunal it would be an injustice, as he and the sponsor have had a relationship for the last six years. He said during that time the sponsor has had two [medical incidents]. He said he does not know how he can convince the Department that his relationship with the sponsor is a genuine relationship. He said he is doing what he can to look after his family. He said whatever he earns, whatever he does, is for his family. He said that if he did not have a genuine relationship with the sponsor, the fight with her would not have happened. He said then again, he and the sponsor got back together again and their relationship has lasted for almost seven years. He said he is not doing it for a visa; he is doing it for his family.

59. **CONSIDERATION OF CLAIMS AND EVIDENCE**

60. At the start of the initial hearing, in the interest of procedural fairness, the Tribunal advised the applicant and his representative that subsequent to a query regarding the validity of a certificate issued by the Department under s.376 of the Act on 4 April 2018, the Department, on 5 June 2018, revoked the certificate. The Tribunal referred the applicant to the document that had been previously covered by the s.376 certificate and explained that the Tribunal did not consider it to be relevant to the current proceedings. The document in question was a copy of an email to the Tribunal from the Department, dated 18 September 2017, requesting clarification as to which specific criteria should have been identified on the front and rear pages of the Tribunal's previous decision record. The Tribunal does not consider the document relevant to the matters under consideration in the current review. The Tribunal provided the applicant the opportunity to review this document and notes he made no submissions or comments about it.

61. **Credibility**

62. When invited by the Department, in November 2016, to provide with evidence regarding his and the sponsor's circumstances, the applicant provided documents to support his claim they continued to live together. When interviewed by the delegate in December 2017 the applicant and sponsor maintained they were living together in an ongoing, genuine relationship but during that interview conceded they were no longer living together. When invited by the Tribunal to comment on the concern this gives rise to, the applicant claimed he did not think he and the sponsor would be separated for very long. Given it would appear the applicant left the [Suburb 1] household, where they parties claim they were residing together, in December 2016 and only returned there for a brief two-week period in January 2017 and the misleading information he provided the Department regarding the sponsor's circumstances was provided in or after July 2017, the Tribunal is not persuaded by this claim and has placed more weight on his concession that he actively sought to misrepresent the nature of his and the sponsor's relationship circumstances.
63. The Tribunal has placed no weight on documents provided with the visa and review applications, which purport to demonstrate the sponsor was residing in a shared household with the applicant at the [Suburb 1] residential address during the 2017 period. Specifically, this includes the following documents:
- an [electricity] account overdue notice addressed to the applicant, due on 10 February 2017;
 - [a gas] bill addressed to the sponsor for overdue charges, due on 28 March 2017;
 - a letter from [an Internet Provider] to the sponsor, notifying the termination of internet service, dated 8 March 2017;
 - a toll notice from NSW Roads & Maritime Services addressed to the applicant, due [in] March 2017;
 - an email from [a Charity Organisation] addressed to the applicant, dated 26 April 2017;
 - a letter from [a Member of Parliament] to the sponsor, dated June 2017;
 - a letter from [Lawyers] to the sponsor, dated 28 June 2017;
 - a [Bank] account statement for the applicant and sponsor, for the period between 17 June 2017 and 11 July 2017;
 - an overdue fine notice from the NSW Office of State Revenue addressed to the applicant, due [in] August 2017;
 - a letter to the sponsor from [Lawyers] requesting the payment for debt owed to [a Telecommunications Provider];
 - an invitation card from [an] RSL addressed to the applicant;
 - a greeting card from [an] RSL addressed to the applicant; and
 - a sample of photographs of the applicant and sponsor and with the sponsor's son, [Child 2].
64. The Tribunal has also placed no weight on the [Bank] account statement as evidence to demonstrate the applicant and sponsor were pooling their finances or sharing the costs of regular living expenses, as the applicant has subsequently conceded he was the only person operating the account in the June 2017 to July 2017 period. The Tribunal further notes the applicant conceded during the hearing that he provided these documents to the Department, despite the documents encompassing a period in which the parties were not living together, as he hoped he and the sponsor would have reconciled their relationship by the time the Department further processed his visa applications. In the view of the Tribunal, this raises the concern that the applicant has knowingly provided information with his visa application

that was knowingly false and misleading in a material particular, as he provided it in support of his claim that he and the sponsor were in a genuine and continuing relationship.

65. The Tribunal has placed no weight on the tenancy agreements which the applicant has provided with the review application and has formed the view that the applicant has provided these documents in a clumsy attempt to support his claims. In forming this view, the Tribunal notes the applicant gave oral evidence he and the sponsor did not move back in together again until the beginning of July 2018. This is consistent with the sponsor's oral evidence. Notwithstanding this, the applicant provided a residential tenancy agreement showing the sponsor leased a property in [Suburb 3], on 10 April 2018 and a further residential tenancy agreement, dated 11 April 2018 showing the applicant leased a property in [Suburb 4], in relation to which he was served an eviction notice on 22 May 2018. The residential tenancy agreement for the [Suburb 4] property was subsequently signed by the sponsor on 31 May 2018, which does not appear sequentially plausible, especially in light of the parties' evidence the applicant moved in to the [Suburb 3] property in early July 2018.
66. The Tribunal is not satisfied the applicant has provided a credible explanation for the inconsistencies between the evidence he and the sponsor provided regarding the circumstances whereby they separated in January 2017. The difference between the evidence provided by them during the hearing, in relation to a domestic violence incident which resulted in the sponsor requiring hospital treatment for a hand injury and her moving out of the [Suburb 1] residence, appears to display a pattern of minimisation on the part of the applicant which is of concern to the Tribunal and raises concern as to the reliability of his evidence.
67. It is of further concern to the Tribunal that the applicant and sponsor subsequently told the person from the [Country 1 Support Organisation], who the applicant had approached to prepare a report in support of his visa application, that there was at no stage any physical violence in the incidents that resulted in the parties separating from each other and the ADVO. The report of Ms [A] also indicates that she was told by the parties that an application was made in May 2018 to revoke the ADVO against the applicant, whereas the amended ADVO, which was provided with the review application, clearly indicates this order was not revoked, but was rather varied and maintained with significant restrictions aimed at protecting the sponsor and her property until February 2019. The evidence of the sponsor during the hearing was that she deemed it necessary to maintain an amended ADVO in order to ensure her ongoing safety from further violence from the applicant. The misrepresentation of the domestic violence incident and the amendment, rather than revocation of the ADVO, are in the view of the Tribunal issues of such fundamental importance that it calls into question the basis on which Ms [A] was able to assess and provide an opinion that the ADVO 'should be considered in context as in these circumstances their situation may be considered a dispute, not DV'. The Tribunal is not satisfied the applicant provided an adequate response when this information was put to him during the hearing pursuant to s.359AA of the Act, where he did not directly respond to concerns raised by the Tribunal and instead made more generalised comments about the nature of his relationship with the sponsor. As well as raising concern with regard to the reliability of the evidence provided by the applicant and sponsor, the Tribunal has placed no weight on the report of Ms [A], as her ability to provide an opinion is compromised by the false and misleading information given to her by the parties.
68. As a consequence of these cumulative concerns, the Tribunal finds that the applicant and sponsor are unreliable witnesses and that they are willing to misrepresent their circumstances where they perceive this will support the applicant's claims. The Tribunal finds weight cannot be given to the applicant's claims where they are not supported by objective third party evidence.

69. Whether the parties are in a spouse or de facto relationship

70. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
71. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3) of the Regulations, which is extracted in the attachment to this decision.

Are the parties validly married?

72. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship.
73. The Tribunal has reviewed a marriage certificate issued by NSW Registry of Births, Deaths and Marriages which states the parties were married in [Suburb 2], NSW in August 2012.
74. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

75. The applicant and sponsor have conceded they separated in January 2017 and ceased cohabitation from that time. The Tribunal accepts the parties ceased living together in January 2017 and finds that the sponsor initially moved out of their shared household some weeks earlier in December 2016.
76. The applicant claims he and the sponsor reconciled their relationship in May 2018 and re-established a household, together with the sponsor's son in her rental accommodation in [Suburb 3], approximately two weeks before the initial hearing, in early July 2018. He said they reconciled because they love each other. For the following reasons, the Tribunal does not accept this claim.

77. The financial aspects of the relationship

78. There is no suggestion the applicant and sponsor's finances were anything but separately managed over the period from January 2017 until recent months. There is no evidence the applicant and sponsor jointly own real estate or other major assets, nor is there evidence they have any joint liabilities, or any legal obligation in respect of each other. There is no evidence of the pooling of financial resources, in relation to major financial commitments or other commitments. In relation to the basis of any sharing of day to day household expenses, the Tribunal has reviewed the very limited account statements provided by the applicant that are not manifestly misleading and is not satisfied they demonstrate the use of the [bank] account for the payment of regular expenses. The Tribunal is also not satisfied the electricity account, from May 2018, establishes if this account was paid and if so, where

the funds to pay the account came from. As previously discussed, the Tribunal considers the oral evidence given by the parties during the hearing to be unreliable. Whilst the applicant's names are both on a residential tenancy lease for a property in [Suburb 4], there is no evidence or even claim they actually both resided at this location, or any documentary evidence to demonstrate whether the bond payment and rent for this or the other property in [Suburb 3] is a shared expense.

79. The Tribunal finds the available credible evidence does not support the applicant's claim he and the applicant currently share regular expenses. The Tribunal does not consider the financial aspects of the parties' relationship to be indicative of a couple with a shared commitment to a life together, or that they support the contention that they are in a genuine and continuing relationship.

80. *The nature of the household*

81. The applicant and sponsor lived apart from January 2017. They claim to have re-established a household together in early July 2018. The Tribunal is not satisfied that this claim is supported by credible documentary evidence. As discussed previously in this decision, the applicant sought to convey to the Department the impression he and the sponsor were maintaining a shared household together throughout 2017 and knowingly provided them with copies of correspondence addressed to them both at the [Suburb 1] address in an attempt to misrepresent the nature of their household circumstances. The Tribunal can see no reason it should regard as credible the applicant's claim to have reconciled with the sponsor and re-established a household with her in the period brief between him receiving a hearing invitation from the Tribunal and the date of his appearance before the Tribunal in July 2018.
82. The applicant said he would like at some future stage encourage the sponsor's son to join a sporting club so that he could play soccer. He made no other claims in relation to the sponsor's son, or any involvement he has in the care of this child. He claimed he financially supports both the sponsor and her son, but for the reasons discussed elsewhere, as there is no credible documentary evidence to support this claim, the Tribunal has placed no weight upon it.
83. The applicant gave evidence he, the sponsor and her son are living together in [Suburb 3]. The Tribunal is not satisfied he has provided credible documentary evidence to support this claim. Whilst he has provided an electricity account from this address with his name as the account holder, this is not in and of itself a clear indication he is living at this address and the Tribunal considers it more likely than not that he has opened this account for the purpose of supporting the visa application. The residential tenancy agreements and related documents provided with the review application create a confusing and inconsistent picture which does not clearly demonstrate who was living where or when.
84. There is little objective documentary evidence which indicates the nature of the parties' household arrangements at the time of this decision are indicative of two people who have a mutual commitment to a shared life together. The Tribunal does not accept the applicant's contention that the provision of a residential lease is sufficient to demonstrate the genuine nature of the parties' relationship. The applicant does not claim to have more than superficial involvement in the care of the sponsor's child and the parties do not have a child from their union for whom they have shared parental responsibility. The applicant's claims regarding responsibility for housework are not persuasive. The Tribunal finds the nature of the parties' household arrangements do not support the contention they are in a genuine and continuing relationship.

85. *The social aspects of the relationship*

86. The applicant said he and the sponsor represent themselves to other people as being in a married relationship with each other. The Tribunal has placed no weight on the residential tenancy agreement, which both the parties have signed. This is because the applicant has demonstrated by his previous actions that he has is prepared to misrepresent his circumstances through providing documents in supporting of his claims that are misleading. In any event, the placement of names on a residential tenancy lease does not in and of itself demonstrate the nature of the relationship they have with each other. The Tribunal accepts the parties registered their marriage with NSW Registry of Births, Deaths and Marriages and has placed some weight on this evidence.
87. The applicant claims his relatives and friends and friends of the sponsor know that their relationship is genuine as they represent themselves as a married couple to these people. He has however supplied no witness support statements or declarations attesting to the current state of the parties' relationship, and the Tribunal has placed weight on the lack thereof. The Tribunal notes emails purporting to be from the applicant's mother, dated 6 July 2018, have been provided with the review application, along with emails from the Australian [charity] and a [temple], which are both also dated in July 2018. The Tribunal considers it more likely than not these documents have been sourced for the purpose of supporting the applicant's claim to have reconciled his relationship with the sponsor. The Tribunal is not satisfied they are a genuine reflection of the opinion of other people about the current state of the parties' relationship, or of the extent to which they undertake activities together.
88. The applicant gave evidence that he and the sponsor go out for meals together regularly, but has not provided credible documentary evidence in support of this claim. The nature of this and other claims he made with regard to the social aspects of the parties' relationship also belies their concession they were not in a relationship, socialising or living together throughout 2017, for much of which time there was an ADVO taken out against the applicant by the sponsor.
89. The Tribunal noted there was a lack of evidence regarding the social aspects of the parties' relationship or that they jointly plan and undertake activities together. The applicant claimed he and the sponsor, on occasion, accompany each other to religious events at their respective places of worship and indicated some of the photographs provided demonstrate their attendance, with the sponsor's son at a church service. The Tribunal has reviewed the photographs provided with the review application and notes they appear to have been taken in only a few settings and whilst one of these may be a church, it is not apparent when these photographs were taken. The photographs do not show the parties interacting with other people and in general look quite contrived in nature. The Tribunal has placed no weight on these photographs as an indication of the how the parties represent themselves to other people or the general community. The Tribunal is also not satisfied these photographs demonstrate any significant involvement of the applicant has in the care of the applicant's son, or that the parties plan or undertake many joint social activities.
90. With the exception of the marriage certificate and residential lease documents, there is little objective documentary evidence which would indicate the social aspects of the parties' relationship resemble those of two people with a mutual commitment to a shared life together, due to the general concerns with regard to the reliability of the applicant's evidence and his demonstrated propensity to misrepresent his circumstances when he considers this advantageous to him. The Tribunal is concerned that the aforementioned tenancy documents were sourced so as to support the applicant's visa application rather than for other genuine reasons. There is no evidence that the parties' extended family systems support their relationship at the present time, or that they have contact with neighbours who can attest to the genuine nature of their relationship.

91. After considering the available evidence, the Tribunal finds the social aspects do not support the contention the applicant and sponsor are, at the time of this decision, in a genuine and continuing relationship.

92. *The nature of the applicant and sponsor's commitment to each other*

93. As to the duration of the relationship, the Tribunal accepts the parties have been married since August 2012. The applicant emphasised the length of the relationship in his oral evidence to the Tribunal. He has however conceded the sponsor left the relationship in January 2017 as a result of domestic violence perpetrated by him against her, apparently in response to his developing doubt as to whether the sponsor had a commitment to an exclusive relationship with him. The applicant claims he reconciled his relationship with the sponsor in May 2018 and that they re-established a household in early July 2018. The Tribunal is not satisfied that the applicant has provided sufficient credible evidence to support this claim. The Tribunal is therefore not satisfied the parties are at the time of this decision in a relationship where they have a mutual commitment to a shared life together. As a consequence, whilst they may have been married for six years, the Tribunal has placed little weight on this finding.

94. As to the length of time during which the applicant and sponsor have lived together, the Tribunal notes the applicant has provided copies of a few different tenancy agreements relevant to the 2018 period, one of which the sponsor signed after the applicant appears to have been served an eviction notice to terminate the agreement in question. The Tribunal finds that there is a lack of overall credible evidence demonstrating the parties have, since separating in January 2017, re-established a shared household together and for this reason the Tribunal has not placed weight on the claimed period of time the parties have lived together.

95. As to the degree of companionship and emotional support that the parties draw from each other, the Tribunal notes the applicant claims to be in a happy loving relationship with the sponsor and that she provided oral evidence which was consistent with this claim.

96. The report of Ms [A] provides the opinion that both the applicant and sponsor have been under pressure as a consequence of the applicant's visa difficulties, the sponsor's [medical incidents] and stressors in their respective families of origin. Ms [A] expresses the view they have lacked guidance and support in managing these issues and that they now have a commitment to each other and a joint future. Ms [A] suggests the ADVO is key to the applicant and sponsor leading separate lives since 2017.

97. The Tribunal accepts the sponsor has suffered [medical incidents] over recent years. The Tribunal considers it significant that one of these [medical incidents] appears to have occurred around the time of the domestic violence in the December 2016 – January 2017 period and the applicant's concern as to whether the sponsor was in an exclusive relationship with him. The Tribunal acknowledges this would have been a stressful period for both the applicant and sponsor but is not satisfied it can make a clear finding as to the actual dynamics and circumstances creating the conflict between the parties at that time. What is quite apparent is that the parties' relationship was under considerable strain towards the end of 2016 and that they separated from each other in January 2017, some four to five months before the ADVO was taken out in May 2017. The Tribunal has noted the sponsor's indication to the delegate, when interviewed in December 2017 that she was at that stage happy and contented in her life. Whilst the sponsor told the delegate she would like to reconcile her relationship with the applicant, there was no indication that applicant and sponsor had at that time made any effort to do so.

98. The Tribunal is not satisfied the evidence demonstrates the ADVO taken out against the applicant in May 2017 accounts for the breakdown in the parties' relationship in the late 2016 and early 2017 period. It rather appears to have been an action taken by the sponsor to ensure her personal safety after an initial incident of domestic violence resulting in her requiring hospital treatment and subsequent incidents where the applicant went to the place where she was residing after she left him and further difficulties ensued. Whilst considering the report of Ms [A], the Tribunal has, as previously discussed in this decision, placed little weight upon it due to the report writer not receiving accurate information from the applicant and sponsor.
99. The applicant gave evidence he and the sponsor support each other emotionally. The Tribunal is not persuaded by this claim. The sponsor went through a major life stressor during 2017, being the removal of her child by the NSW child protection authorities. The applicant was unsure when this event occurred or when [Child 2] was restored to the sponsor's care. He explained this was because it occurred whilst he was prevented from having contact with the sponsor because of the ADVO. However, the Tribunal considers it implausible, in a supportive relationship that the applicant and sponsor would not have discussed this issue at some depth since the time they claim they began reconciling their relationship. Whilst the sponsor identified stressors impacting on the applicant, such as the death of his father and his mother's accident injuries, she did so in what appeared a rehearsed manner and the Tribunal was not satisfied this was an indicator the parties have a supportive connection with each other. Both the applicant and sponsor referred to the applicant visiting the sponsor when she was in hospital in September 2017 in a similar rehearsed manner and the Tribunal was also not persuaded this was indicative of their having a supportive connection with each other.
100. The Tribunal notes the parties gave consistent evidence during the hearing that they see their relationship as long term. However, the Tribunal considers the applicant and sponsor's evidence with regard to this and related issues to be unreliable, and the Tribunal has placed no weight upon it.
101. ***Overall assessment of the parties' relationship***
102. The Tribunal is not satisfied the evidence establishes the parties have, at the time of this decision, a mutual commitment to a shared life as husband and wife to the exclusion of others, or that they are at the time of this decision in a genuine and continuing relationship. This is because, when considering the different aspects of the parties' relationship at the time of this decision or at any time since January 2017, the Tribunal is not satisfied the parties have to any significant degree shared regular expenses, pooled their finances, or that they have any shared assets or debts or any legal obligations to each other. There is a lack of credible evidence the parties have re-established a household together. There is no credible evidence from members of the parties' families and friends to support the contention their relationship is ongoing at the present time, and there is little evidence the parties plan or undertake social activities together, or that they emotionally support each other or have shared responsibility for the care of children.
103. Given these findings, the Tribunal is not satisfied that, at the time of this decision, the parties had a mutual commitment to shared life to the exclusion of others, or genuine and continuing relationship, or that they live together or not separately and apart on a permanent basis.
104. On the basis of the above, the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time of this decision.
105. Therefore, the applicant does not meet cl.820.221. There is no evidence to indicate the applicant meets the alternative criteria contained in cl.820.211 or cl.820.221(3).

106. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

107. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

David Barker
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).